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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

2 CFR Part 1880

RIN 2700-AD81

Commercial Acquisition; Extension of Suspension and Debarment Exclusions, Grants and Cooperative Agreements

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA has adopted as final, with no change, a proposed rule to extend coverage of non-procurement suspension and debarment to all tiers of procurement and non-procurement actions under all grants and cooperative agreements. The revisions herein are part of NASA's retrospective plan under EO 13563 completed in August 2011. NASA's full plan can be accessed at:

http://www.nasa.gov/pdf/581545main_Final%20Plan%20for%20Retrospective%20Analysis%20of%20Existing%20Regulations.pdf.

EFFECTIVE DATE: [Insert date 30 days after publication in the Federal Register]

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SUPPLEMENTARY INFORMATION:

A. Background

On August 31, 2005 (70 FR 51865), the Office of Management and Budget promulgated guidelines to Federal agencies on the governmentwide debarment and suspension system for nonprocurement programs. The OMB guidance to Federal Agencies was amended on

November 15, 2006 (71 FRN 664320). These two notices resulted in the governmentwide regulation at 2 CFR Part 180. Specifically, at §180.220(c), OMB offered Federal agencies flow down options for application of nonprocurement suspension and debarment regulations to procurement actions under covered transactions. OMB permitted Agencies to flow down requirements to just the first-tier or to all lower-tier participants.

On April 20, 2007, NASA promulgated a final rule (72 FR 19783) which established a new Part 1880 in Title 2 of the Code of Federal Regulations (CFR) on nonprocurement debarment and suspension. This rule implemented and supplemented the Office of Management and Budget's (OMB) guidance provided at 2 CFR Part 180. It included agency-specific regulations related to nonprocurement suspension and debarment. At the time of that action, NASA elected to limit the flow down of nonprocurement suspension and debarment applicability to only first-tier procurement contacts thereunder. However, NASA has since reconsidered its position on flow down and this final rule revises 2 CFR 1880.220 to apply to all participants at all tiers, and to procurement and non-procurement actions at any dollar amount, under Agency grants and cooperative agreements. NASA will not permit any subawards to individuals or entities that are listed on the Excluded Parties List Service (EPLS).

To extend the suspension and debarment exclusions, NASA published a proposed rule on October 29, 2012. The due date for public comments in response to the proposed rule was December 28, 2012. NASA did not receive any comments.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting

flexibility. This final rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Small entities are already required to check the Excluded Parties List System (EPLS) prior to making first-tier, procurement subawards under a grant or cooperative agreement. They will now be required to ensure that none of their potential subrecipients are on the EPLS. The EPLS is an easy-to-access and easy-to-use on-line resource.

D. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) is not applicable because the changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 2 CFR Part 1880

Government procurement; Federal Grant program

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Acting Assistant Administrator for Procurement.

Accordingly, 2 CFR Part 1880 is amended as follows:

PART 1880—NONPROCUREMENT DEBARMENT AND SUSPENSION

1. The authority citation for part 1880 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103-355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 42 U.S.C. 2473(c)(1).

2. Section 1880.220 is revised to read as follows:

§ 1880.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

NASA extends coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement action, to all lower tier subcontracts, at all dollar values, consistent with OMB guidance at 2 CFR 180.220(c) and the figure in the appendix at 2 CFR Part 180. NASA does not permit subcontracting to suspended or debarred entities at any tier, at any dollar amount.

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